

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 1:25-cv-11048-ADB

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff President and Fellows of Harvard College (“Harvard”) submits this Notice of Supplemental Authority with respect to Harvard’s pending Motion for Summary Judgment (ECF 69) to bring to this Court’s attention the published opinion issued July 18, 2025 by the U.S. Court of Appeals for the First Circuit in *American Public Health Association, et al. v. National Institutes of Health, et al.*, No. 25-1611, and *Commonwealth of Massachusetts, et al. v. Robert F. Kennedy, Jr., et al.*, No. 25-1612, 2025 WL 2017106 (1st Cir. July 18, 2025). A true and correct copy of that opinion is attached hereto as **Exhibit A**.

The First Circuit denied defendants’ request for a stay pending appeal of the district court’s order declaring unlawful and setting aside defendants’ policy prohibiting the funding of research grants in certain categories and defendants’ grant terminations that flowed from that policy.

The First Circuit observed that “the district court clearly had jurisdiction to grant ‘prospective relief’ that will govern ‘the rather complex ongoing relationships’” between the parties. 2025 WL 2017106 at *6 (quoting *Bowen v. Massachusetts*, 487 U.S. 879, 905 (1988)). And although “[t]he declaratory judgment vacating the grant terminations presents a closer question,” the court concluded defendants had not established a likelihood of success on the merits

of their Tucker Act argument because the district court’s orders “did not award ‘past due sums,’ but rather provided declaratory relief that is unavailable in the Court of Federal Claims” and “neither the plaintiffs’ claims nor the court’s orders depend on the terms or conditions of any contract.” *Id.* The First Circuit distinguished the Supreme Court’s recent ruling in *Department of Education v. California*, 145 S. Ct. 966 (2025), noting that the *California* plaintiffs’ claims were premised upon the terms of individual grant agreements and the district court ordered the Government to pay past-due sums. *Id.* at *7. Because (as here) plaintiffs instead challenged “unlawful agency-wide policies” that “violate various federal statutes and the Constitution,” the terminations at issue “flowed directly from those unlawful policies,” and plaintiffs sought “declaratory relief under the APA independent of any contractual language,” the First Circuit determined *California* did not control. *Id.* at *7-8.

This binding authority forecloses the Government’s jurisdictional arguments here, which rest on premises materially indistinguishable from those the First Circuit rejected.

Dated: July 20, 2025

Respectfully submitted,

William A. Burck*
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, DC 20005
williamburck@quinnemanuel.com

Robert K. Hur*
KING & SPALDING LLP
1700 Pennsylvania Ave. NW, Suite 900
Washington, DC 20006
rhur@kslaw.com

Joshua S. Levy (BBO #563017)
Mark Barnes (BBO #568529)*
John P. Bueker (BBO #636435)
Elena W. Davis (BBO #695956)
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Joshua.Levy@ropesgray.com
Mark.Barnes@ropesgray.com
John.Bueker@ropesgray.com
Elena.Davis@ropesgray.com

Douglas Hallward-Driemeier
(BBO #627643)
Stephen D. Sencer*
ROPES & GRAY LLP
2009 Pennsylvania Avenue, NW
Washington, DC 20006
Douglas.Hallward-Driemeier@ropesgray.com
Stephen.Sencer@ropesgray.com

/s/ Steven P. Lehotsky
Steven P. Lehotsky (BBO # 655908)
Scott A. Keller*
Jonathan F. Cohn*
Mary Elizabeth Miller* (BBO # 696864)
Shannon G. Denmark*
Jacob B. Richards (BBO # 712103)
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave. NW, Suite 700
Washington, DC 20001
T: (512) 693-8350
F: (512) 727-4755
steve@lkcfirm.com
scott@lkcfirm.com
jon@lkcfirm.com
mary@lkcfirm.com
shannon@lkcfirm.com
jacob@lkcfirm.com

Katherine C. Yarger*
LEHOTSKY KELLER COHN LLP
700 Colorado Blvd., #407
Denver, CO 80206
katie@lkcfirm.com

Joshua P. Morrow*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
josh@lkcfirm.com

Danielle K. Goldstein*
LEHOTSKY KELLER COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305
danielle@lkcfirm.com

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

Counsel for Plaintiff certify that they have submitted the foregoing document with the clerk of court for the District of Massachusetts, using the electronic case filing system of the Court. Counsel for Plaintiff hereby certify that they have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

/s/ Steven P. Lehotsky

Steven P. Lehotsky